

June 1932

Book Reviews

Chicago-Kent Law Review

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>

 Part of the [Law Commons](#)

Recommended Citation

Chicago-Kent Law Review, *Book Reviews*, 10 Chi.-Kent L. Rev. 218 (1932).
Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol10/iss3/4>

This Book Review is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.

BOOK REVIEWS

THE LAWS OF INDIANA TERRITORY, 1801-1809. Collections of the Illinois State Historical Library. Vol. XXI: Law Series, Vol. II. Edited with Introduction by Francis S. Philbrick. Springfield, Illinois: Illinois State Historical Library, 1930. Pp. cclxxxii, 734.

This collection of early territorial laws, of what was once part of Illinois and the collection of the laws of the territory northwest of the Ohio River—previously issued—give us historical materials needed for a thorough understanding of the legal history of this state. A volume still to be issued will present the laws of the Illinois Territory from 1809 to the admission of the state in 1818.

In Professor Philbrick's Introduction, we are given an admirable historical survey of the period covered by the reprints. Many assumptions long held regarding the pioneer community life of the Northwest are shown to be erroneous by an examination of the laws and a perusal of the Introduction. The editor points out, for example, that these statutes were not an indigenous, slowly developed product and therefore did not reflect community life. A study of the territorial history does not confirm the accepted belief that a society's progress in civilization may be measured by its laws.

Biographical material of importance in such a study is included in the Introduction with its footnotes and separate Appendix. A discussion of lawyers practicing in the Territory considers their qualifications and the legal requirements for practice. The author says, "It would be difficult to find a law of any place or time more admirably expressing the qualifications proper to members of the bar than a statute of the Northwest Territory of 1792." Legislation passed by the Indiana Territory, however, did not carry on such provisions and many entered the legal profession with but little preparation.

This work is particularly valuable to the student of early American legal history. To those interested particularly in the

development of Illinois, the book will be most welcome. It is well annotated and indexed.

THE LAW OF SHIPMENT. Louis Otis Van Doren. New York: Baker, Voorhis & Company, 1932. Pp. xlii, 1203.

The law pertaining to shipment is here presented in a way to make it most convenient for reference by practitioners of the law. A new method of treatment has been used. Instead of compiling an encyclopedia, which form frequently tends to inaccuracies, the author has compiled cases themselves. A brief statement of the facts is given, followed by excerpts from the opinion of the court, and frequently, in addition, comment of the author. In this way inaccuracies and erroneous opinions of the author have been eliminated.

It is, perhaps, not surprising that a majority of the cases are English, since from this nation has come the bulk of our law as we know and practice it today. In addition to this it must also be remembered that for centuries England was a nation of great maritime trade, from which resulted much litigation and many valuable decisions.

Among the interesting topics dealt with are "F.O.B." contracts, both regular and exceptional; "C.I.F." contracts; bills of lading, with interesting cases that have arisen under forged bills; deviation; transshipment or reloading; and remedies in case of delay in sailing or departure.

The book shows every sign of having been the result of thorough scholarly treatment and should prove valuable to students as well as practitioners.

THE JUDICIAL DISCRETION OF TRIAL COURTS. Renzo D. Bowers. Indianapolis, Indiana: The Bobbs-Merrill Company, 1931. Pp. lxxii, 651.

Perhaps one of the most vague and uncertain phases of our law will be classified as a result of this book. As its title sug-

gests, it was the author's purpose in this book to analyze and codify the various discretions which are subject to utilization by the trial courts.

In the absence of statutory regulation trial courts, in their discretion may adopt either of two inconsistent lines of administrative action. It is noted that the reviewing court often renders this discretion no discretion at all by reviewing and reversing the action of the trial court. Properly this is not the province of the reviewing court.

The author states that the purpose of the volume is to serve as "a ready guide to quick decisions as to rules applicable to hundreds of procedural situations that trial judges and trial lawyers must meet in the heat of an intelligent and hard-pressed trial."

Such subjects as Discretion in Assuming Jurisdiction of Causes, Amendment of Pleadings, Change of Venue, and Continuances, are treated at length. Although many criminal cases are considered, the work is devoted principally to civil actions.

Whether a physical examination should be permitted in open court, and when and under what conditions, and whether experiments should be made in the presence of the jury, are interesting illustrations of the subject matter treated.

This book fills the gap between works dealing with evidence and those concerned with practice and procedure.

CONVICTING THE INNOCENT. Edwin M. Borchard. New Haven, Connecticut: Yale University Press, 1932. Pp. xxix, 421.

It is well known that witnessess sometimes wilfully misrepresent facts, that juries are misled, and that occasionally innocent men are convicted of crime upon circumstantial evidence.

It is probably not so well known that many innocent persons have been convicted and sentenced to prison or even to death upon the positive testimony of witnesses, honestly mistaken, as to the identity of the accused.

This book contains a collection of sixty-five cases which are examples of what the author terms "Errors of Criminal Justice." These cases have been selected from the records of criminal prosecutions in the United States, with the exception of three English cases. Fifty of them, by reason of their importance, have been used as principal cases. It is important to note that the cases have been chosen from a much larger number as illustrative cases of the miscarriage of justice.

This study has not been confined to any particular section of the county nor to any one branch of criminal law. The cases selected have been drawn from all parts of the county and include all manner of crimes such as homicide and counterfeiting.

In most of the cases the accused was positively identified by a number of witnesses and the defense was an alibi which the jury chose to disbelieve. However, in a few cases the accused was "framed" by the perjured testimony of witnesses who either bore a grudge or wished to hide their own guilt. In one case the conviction was probably obtained largely through over-zealous prosecution and the over-awing influence of the prosecutor with the jury. In most cases an innocent person was compelled to spend years in prison and was released only through the confession of the real criminal or through evidence obtained after years of search.

Professor Borchard points out that usually no recompense has been made to the victims of the wrongful convictions for the years of suffering and mental anguish spent in prison and for the large sums of money expended in proving their innocence. The purpose of the book is to call attention to the debt owed to those who have been wrongfully convicted.

The concluding chapter recommends state indemnity for errors of criminal justice and points out defects in existing statutory attempts to indemnify innocent persons convicted of crime. It seems strange that Professor Borchard did not also recommend that the records of such convictions be completely expunged. A pardon does not clear the name of an innocent person from the stigma left by a conviction.

"Convicting the Innocent" clearly indicates some of the defects in the administration of criminal justice. It is a worthy

addition to the literature dealing with suggested reforms in this branch of the law.

AMERICAN FAMILY LAWS: A Comparative Study of the Family Law of the Forty-eight States, Alaska, the District of Columbia, and Hawaii to Jan. 1, 1931, Vol. I. Chester G. Vernier. Stanford University, California: Stanford University Press, 1931. Pp. xxi, 311.

The value of uniform laws has already been seen in commercial fields; it has long been advocated in the field of domestic relations. Regardless of the need for uniform family laws, there is no doubt but that every state could well afford to adopt a comprehensive and well planned domestic relations code. Until the deficiencies and discrepancies of the law are pointed out and until some pressure is brought to bear upon the legislative bodies there is not likely to be a radical improvement. The author of this book, a Herculean accomplishment, points out the deficiencies and discrepancies. It remains with the readers to apply the pressure.

After reading, or even glancing through this book, one is inclined to look upon the existing statutory laws of domestic relations as the puny efforts of intellectual midgets. Many of the enactments are emasculated by judicial decisions, which hold the statutory provisions to be declaratory only, because they do not expressly forbid conduct contrary to that directed. Others appear futile, because they are so easily evaded by the accomplishment of the forbidden object in another state. Others are, in effect, useless because of their sketchiness. Some enactments are meritorious, but in few states are they complete.

This work would serve as an excellent basis for a commission delegated to compile a uniform domestic relations code. But such code would necessarily have to be clear and comprehensive. It is evident that uniform statutes would be of little value if there is possibility of forty-eight different interpretations of them.

The author appears to have treated his subject exhaustively and accurately. His method of treatment has been to make a brief summary of the common law; to state the statutory law, first in summary form, second in detail, showing variations, resemblances, and omissions; to add such comment and criticism as seemed pertinent; and to collect under each head a selected list of references, including texts, casebooks, annotations, reports, articles, and case notes from law magazines. Comparative tables have been used for illustrative purposes. These might be used for reference purposes, as might the summaries of statutes, but their accuracy would rapidly decline with new enactments. The interpretation of statutes in the various states, however, furnishes valuable information as far as it extends. Instructors in the law of domestic relations could well afford to possess a volume, not only for the subject matter as a supplement to texts and cases, but also for the extensive lists of references.

Volume I, which includes only Introductory Survey and Marriage is shortly to be followed by volumes on Divorce and Husband and Wife.

PIONEERS OF FREEDOM: An Account of the Icelanders and the Icelandic Free State 874-1262. Sveinbjorn Johnson. Boston: The Stratford Company, 1930. Pp. vii, 361.

The so-called "English common law" is not English. Such a statement may sound paradoxical, but source materials show that it grew from the legal system common to all Nordic peoples. On account of the meagerness of Anglo-Saxon records, more of primitive common law procedure can be learned from the Saga literature of Iceland than from any English source. The Saga of Burnt Njal is a law book as well as a good story and outstanding literature. This, account of the great Icelandic lawyer leaves us in the dark, however, as to many things. The Saga singer took for granted that his hearers fully understood the

history, the economic condition, and the constitutional law of the Icelandic Commonwealth in the tenth and eleventh centuries. The lawyer will find *Pioneers of Freedom* of great value in understanding the law contained in the sagas, for here are given a clear description of the government, local and national; of the courts, trial and appellate; and of the law itself, both adjective and substantive.

We are introduced to a society where the lawyer rather than the warrior is the most powerful and respected citizen. We watch him direct legislation, give legal counsel, institute suits, recite declarations and defensive pleadings, and with consummate skill conduct technical litigation. We are impressed with the fact that time has not increased the original technicality of our pleading, but rather has shown it thereof. Needless to say, the author is a lawyer, and lawyers will profit by reading the book.

BOOKS RECEIVED

CASES AND MATERIALS ON THE LAW OF LANDLORD AND TENANT.
Albert C. Jacobs. St. Paul, Minnesota: West Publishing
Company.